

## § 149.1

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AUTHORITY: Section 1102 of the Patient Protection and Affordable Care Act (Pub. L. 111-148).

SOURCE: 75 FR 24466, May 5, 2010, unless otherwise noted.

## Subpart A—General Provisions

### § 149.1 Purpose and basis.

This part implements the Early Retiree Reinsurance Program, as required by section 1102 of the Patient Protection and Affordable Care Act (Pub. L. 111-148).

### § 149.2 Definitions.

For purposes of this part, the following definitions apply:

*Authorized representative* means an individual with legal authority to sign and bind a sponsor to the terms of a contract or agreement.

*Benefit option* means a particular benefit design, category of benefits, or cost-sharing arrangement offered within an employment-based plan.

*Certified* means that the sponsor and its employment-based plan or plans meet the requirements of this part and the sponsor's application to participate in the program has been approved by the Secretary.

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*Chronic and high-cost condition* means a condition for which \$15,000 or more in health benefit claims are likely to be incurred during a plan year by one plan participant.

*Claim or medical claim* means documentation, in a form and manner to be specified by the Secretary, indicating the health benefit provided, the provider or supplier, the incurred date, the individual for whom the health benefit was provided, the date and amount of payment net any known negotiated price concessions, and the employment-based plan and benefit option under which the health benefit was provided. The terms *claim* or *medical claim* include medical, surgical, hospital, prescription drug and other such claims as determined by the Secretary.

*Early retiree* means a plan participant who is age 55 and older who is enrolled for health benefits in a certified employment-based plan, who is not eligible for coverage under title XVIII of the Act, and who is not an active employee of an employer maintaining, or currently contributing to, the employment-based plan or of any employer that has made substantial contributions to fund such plan. In this part, the term *early retiree* also includes the enrolled spouse, surviving spouse, and dependents of such individuals. The determination of whether an individual is not an active employee is made by the sponsor in accordance with the rules of its plan. For purposes of this subpart, however, an individual is presumed to be an active employee if, under the Medicare Secondary Payer rules in 42 CFR 411.104 and related guidance published by the Centers for Medicare & Medicaid Services, the person is considered to be receiving coverage by reason of current employment status. This presumption applies whether or not the Medicare Secondary Payer rules actually apply to the sponsor. For this purpose, a sponsor may also treat a person receiving coverage under its employment-based plan as a dependent in accordance with the rules of its plan, regardless of whether that individual is considered a dependent for Federal or state tax purposes. For purposes of this definition of early retiree, an employer maintaining, or currently contributing to, the employment-based plan or any